Filed 5/29/19 In re D.S. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re D.S. et al., Persons Coming Under the Juvenile Court Law.	B288665 (Los Angeles County Super. Ct. No. 17LJJP00223)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of the County of Los Angeles, Nancy Ramirez, Judge. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

The juvenile court sustained a Welfare and Institutions Code[1] section 300 petition under subdivision (b)(1), finding that M.S. (mother) was unable to provide care for her seven children and that they were therefore at risk of harm due to her admitted marijuana use during her recent pregnancy. On appeal, mother contends that there was insufficient evidence to support the juvenile court's jurisdictional findings, arguing that her past marijuana use, without more, did not support an inference that she could not provide care for her children or that they were presently at risk of harm due to that past use. We affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Referral, Section 300 Petition, and Detention*

According to the November 30, 2017, detention report, on October 19, 2017, the Los Angeles County Department of Children and Family Services (the Department) received a child

---

[1] All further statutory references are to the Welfare and Institutions Code.

abuse referral alleging mother's general neglect of her children.[2] The referral reported that mother delivered a baby girl, M.T., earlier that month who weighed four pounds, eight ounces. Following the delivery, mother tested positive for marijuana, and a meconium[3] test for M.T. was also positive for marijuana.

On October 24, 2017, two children's social workers (CSWs) visited mother's home in Palmdale. One of the CSWs informed mother of the referral and requested an interview to which mother agreed. Mother told the CSW that she was aware of the reason for the referral, denied any current marijuana use, and agreed to submit to a drug test the next day. Mother also allowed the other CSW to interview her oldest son, L.S., who appeared clean and well-groomed and reported that although he struggled academically, his needs were met at home and he always had enough to eat. The CSW also observed 10-month-old H.T. who "appeared clean and responded well to mother."

Mother's interview with the CSW, however, was interrupted when police arrived and searched the home for A.T.

---

[2] At the time the section 300 petition was filed, mother lived with seven of her children, each of whom was named in the petition: D.S., age 15; L.S., age 13; A.S., age 7; J.S., age 6; Alicia S., age 2; H.T., age 1; and M.T., age 1 month. Mother's 11-year-old daughter, Z.T., had been living with her father, R.T., for the past three years, did not currently visit mother's home, and was not named in the petition.

[3] "Meconium is '[t]he greenish material which is in the intestine of the fetus. It consists of the secretions of the intestine and stomach, bile, etc., and it constitutes the first stools of the newborn infant.' (2 Schmidt, Attorneys' Dictionary of Medicine (1992) p. M-53.)" (*In re S.K.* (2018) 22 Cal.App.5th 29, 32, fn. 2.)

(father), the father of her two youngest children, H.T. and M.T., who had absconded from parole supervision. Mother became "visibly shaken" and admitted that she was "'stressed out.'" When mother asked the CSW to come back another day, the CSW agreed.

On October 30, 2017, mother admitted during a follow up interview to being subject to prior Department investigations as both a minor and an adult, but denied having any open cases. Mother was unemployed and received EBT (electronic benefits transfer) benefits, food stamps, cash aid, and WIC (women, infants, and children) benefits. Mother denied having medical, prescription drug, or mental health issues. She did believe, however, "that she may have post[-]partum depression." She did not have "suicidal thoughts or thoughts of hurting others," but "she mostly [felt] depressed." She planned on asking her doctor for a referral for mental health treatment and would consider Department support services, but preferred seeking "her own services . . . ."

Mother denied having a criminal history or having a substance abuse issue. Mother admitted that she did not have a doctor recommendation for marijuana use, but she nevertheless used marijuana recreationally. She denied using any other drugs or abusing alcohol.

Concerning the allegations that brought her family to the attention of the Department, mother stated that "she used [marijuana] consistently during her pregnancy with [M.T.] because she had intended to abort the child." But once mother "made the decision to keep her baby, she stopped using marijuana." According to mother, at the time she became pregnant with M.T., "she was going through a lot in her personal

life with her "'baby daddy'" [father] and she was also concerned because she "already [had] so many children and [had] not been able to seek employment." Mother believed she was suffering from some form of post-partum depression because her pregnancies with H.T. and M.T. were "back to back" and she "never really [had] the time to deal with her depression." She began smoking marijuana regularly in her first trimester of pregnancy with M.T. But she denied using or abusing any other substance during that time. Mother believed smoking marijuana "helped her deal with some of the anxiety she was going through and also helped her cope with her decision to abort her unborn child [M.T.]" Mother maintained that once she decided to deliver M.T., she stopped using marijuana altogether.

Mother told the CSW that she did not smoke marijuana around the children during her pregnancy with M.T. Instead, she would smoke marijuana while visiting friends, leaving the children in the care of maternal grandmother and maternal great grandfather. Mother insisted she no longer smoked marijuana[4] and agreed to seek therapeutic services as soon as she was able.

The CSW also interviewed 15-year-old D.S., who stated her needs were met at home, she always had enough to eat, and confirmed that she had never seen mother smoke marijuana or drink alcohol at home.

The CSW who interviewed mother also interviewed a medical social worker at the hospital where mother delivered M.T. She confirmed that the hospital's records showed that mother tested positive for marijuana after delivering M.T. and

---

[4] On October 30, 2017, the CSW received the results of mother's October 25, 2017, drug test and it was negative for all substances.

that the meconium test for M.T. tested "extremely low" for marijuana. Mother's second drug test, however, "was clean." According to the medical social worker, mother was forthcoming about her marijuana use during her pregnancy with M.T. and, based on mother's test results, the medical social worker believed mother's statements about when she stopped using marijuana. She also observed mother being "very appropriate" and "extremely present" with M.T. and "very proactive in completing her second drug test." The medical social worker did not have "a lot of concerns" about mother's family because "she found mother to be appropriate and cooperative." And, although mother only had two prenatal visits prior to delivering M.T. prematurely, M.T. "had an APGAR[5] score of 8 out of 8 [sic] and was doing well at discharge."

On November 15, 2017, the CSW telephoned mother who claimed that she had contacted a mental health clinic, but was advised that it was not currently accepting new patients. Mother also left messages at two other facilities and was waiting for calls back. The CSW advised mother to continue her efforts to make an appointment to address her mental health. Mother thereafter reported that she had an appointment on November 20, 2017.

On November 30, 2017, the Department filed a section 300 petition alleging two counts against mother and one count against father. In count b-1, the Department alleged that mother's substance abuse: (1) caused M.T. to test positive for marijuana at birth; (2) prevented mother from properly caring for

---

5 "The Apgar score is a standardized method for evaluating newborns in the delivery room. The test rates five categories: pulse, respiratory effort, tone, reflex and color." (*Alef v. Alta Bates Hospital* (1992) 5 Cal.App.4th 208, 213, fn. 1.)

M.T.; and (3) placed M.T. at risk of future harm.[6] In count b-2, the Department alleged that mother's past and current substance abuse prevented her from properly caring for D.S., L.S., A.S., J.S., Alicia S., H.T., and M.T. and placed those children at future risk of harm.[7] In count b-3, the Department alleged that father's past and current methamphetamine use prevented him from properly caring for his children, H.T. and M.T., and placed them at risk of future harm.[8]

---

[6] Count b-1 provided: "The child [M.T.] suffered from a detrimental condition, in that on [the day she was born, she] had a positive toxicology screen for marijuana. Such condition would not exist except as the result of unreasonable acts by [mother] placing the child at risk of physical harm. [M]other's substance abuse endangers [M.T.'s] physical health and safety, and places the child at risk of serious physical harm and damage."

[7] Count b-2 provided: "The children['s] [D.S., L.S., A.S., J.S., Alicia S., H.T., and M.T.] mother . . . has a history of substance abuse, and is a current abuser of marijuana, which renders [her] incapable of providing regular care and supervision of the children. [M]other abused marijuana during [her] pregnancy with [M.T.]. [Following M.T.'s birth,] mother had a positive toxicology screen for marijuana . . . . The children [J.S., Alicia S., H.T., and M.T.] are of such a young age requiring constant care and supervision and . . . mother's substance abuse interferes with providing regular care and supervision of the children. [M]other's substance abuse endangers the children's physical health and safety, and places the children at risk of serious physical harm and damage."

[8] Count b-3 provided: "The children [H.T. and M.T.'s] father . . . has a history of substance abuse, and is a current user of methamphetamine, which renders . . . father incapable of

At the December 1, 2017, detention hearing, the juvenile court, after reading and considering the detention report, found that the Department had made a prima facie case for detaining the children and showing that they were persons described in section 300. The juvenile court further found that, as to father, there was a substantial danger to the physical and emotional health of the children and that there were no reasonable means to protect them without removal from father. The juvenile court also found that, as to father, the Department had made reasonable efforts to prevent removal and that there were no services available to prevent removal. The juvenile court therefore detained H.T. and M.T. from father and released them to the custody of mother.

B. *Jurisdiction/Disposition*

In a December 22, 2017, jurisdiction/disposition report, mother made the following statements: M.T. tested positive for marijuana at birth because while mother was pregnant with her, she intended to have an abortion and therefore "'was drinking and smoking.'" Mother admitted feeling "overwhelmed" at times and the maternal grandmother "would tell her to go out." Mother

---

providing regular care and supervision of the children. The children are of such a young age requiring constant care and supervision and . . . father's substance abuse interferes with providing regular care and supervision of the children. [F]ather is a Registered Controlled Substance Offender and has a criminal history of convictions of Possession of Controlled Substance[s] for Sale. [F]ather's substance abuse endangers the children's physical health and safety, and places the children at risk of serious physical harm and damage."

"would go out once a month and that is when she would smoke." She "'would go with [her] friend to smoke and drink.'"

Mother denied that she had a history of substance abuse. She confirmed that she had not used drugs recently and that she was willing to drug test.

At the time of the jurisdiction/disposition report, mother had still failed to schedule her mental health evaluation despite her admission that she "might have post[-]partum depression" and was feeling "overwhelmed." One of the CSWs also observed that the older two children were "parentified" and "were . . . the ones entertaining the other children, making [their] bottles and changing their diapers."

Although mother was making efforts to parent the children, she appeared overwhelmed trying "to maintain the children's daily needs and support them as best she [could]." The Department believed continuing court jurisdiction was necessary due to the allegations of father's substance abuse, and mother's "denial of [her] mental health [and] substance abuse problems."

On February 5, 2018, the Department filed a last minute information which reported the following: On December 27, 2017, mother was a "no show" for her drug test, despite the fact the Department scheduled it "in the Los Angeles area where mother stated she was." On January 10, 2018, the Department attempted to conduct a family therapy session in mother's home, but mother cancelled it that day due to illness.

At the February 6, 2018, jurisdiction/disposition hearing, the juvenile court admitted the Department's exhibits and considered the arguments of counsel. The court then ruled as follows: "After considering the arguments and the evidence, the court is sustaining the petition in full, finding the Department

has met its burden by a preponderance of the evidence that the child [M.T.] was born with a positive toxicology screen for marijuana; that [mother] admitted smoking marijuana during the course of her pregnancy and that under [count] (B) (2), she has a history of substance abuse and is a current abuser of marijuana. [¶] [The c]ourt notes that she has six children that she was responsible for while she was smoking marijuana during her pregnancy with [M.T.]. [¶] And while [M.T.] may have been born with low levels, it indicates that [mother] was using marijuana to cope with whatever stressors she's had and has responsibilities to care for the other children . . . that are of such a young age, three children under the age of—well, I believe tender years is seven. So there's five children who are of tender years, and they would be at risk of continued marijuana use." The court also sustained count b-3 as to father's children, H.T. and M.T.

III. DISCUSSION

Jurisdictional Findings Were Supported by Substantial Evidence

Mother contends that there was insufficient evidence to support the juvenile court's exercise of jurisdiction over the children pursuant to section 300, subdivision (b)(1). "'When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by

substantial evidence.'" (*In re I.J.* (2013) 56 Cal.4th 766, 773.) In reviewing the jurisdictional findings for substantial evidence, "[w]e do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) We focus our discussion here on count b-2 because that was the basis for the juvenile court's exercise of jurisdiction over mother's seven children named in the petition.

Mother argues, among other things, that there was no evidence to support the juvenile court's findings on count b-2 that: (1) she was unable to provide adequate care for her seven children, including those of tender years, as a result of her past marijuana use; and (2) each of her seven children were at risk of future harm based on her past use of marijuana. Focusing on her self-serving testimony minimizing her current drug use and the evidence that the children were clean, well groomed, adequately nourished, and healthy, mother argues that the Department failed to establish the required nexus between her past drug use and some current inability to provide care for, and some identifiable risk to, one or more of her children.

Mother's arguments ignore much of the Department's evidence and the standard of review under which we are required to consider it. Specifically, the Department showed that, when mother became pregnant with M.T., she had not adequately dealt with the post-partum depression she experienced following H.T.'s birth. In addition to feeling "mostly depressed," mother felt overwhelmed by the number of children for whom she provided

care. She also was experiencing stress and anxiety over her decision to abort her most recent pregnancy with M.T.

To cope with the mental health issues that manifested during her two most recent pregnancies, mother admittedly smoked marijuana regularly, traveling from Palmdale to Los Angeles on at least a monthly basis to smoke with friends while she left her six children behind (including one who was less than a year old) in the care of their grandmother and great grandfather. There was also evidence that the two oldest children, 15-year-old D.S. and 13-year-old L.S., had become "parentified" and were assisting in the care of the younger children.

And, although mother claimed that she stopped using marijuana when she decided not to abort her pregnancy with M.T., she tested positive for marijuana weeks later following M.T.'s delivery. And mother failed to appear for a drug test on December 27, 2017, which supported an inference that she could not pass the test and was also clearly inconsistent with her claim that she had stopped using marijuana.

Moreover, following M.T.'s birth and the Department's involvement with the family, mother refused to address her admitted mental health issues and corresponding substance use, as evidenced by her failure to obtain recommended therapy.

Based on the foregoing evidence, a reasonable trier of fact could have concluded that mother had resorted to self-medication to treat her depression and anxiety, mental issues that persisted at the time the Department began its investigation of the family. The Department's evidence also supported a reasonable inference that mother's claim that she stopped smoking marijuana was not credible. Given mother's subsequent failure to adequately

address her mental health issues and her failure to drug test, a trier of fact could also have concluded that the issues that initially brought her to the attention of the Department had not been resolved by the time of the jurisdiction hearing. Based on those rational inferences, a reasonable trier of fact could have concluded that mother could not adequately care for her children, as evidenced by, among other things, her past need to leave the children at home while she traveled to Los Angeles to smoke marijuana with friends and by her two oldest children assuming parental roles in the younger children's daily lives. Without mother's complete attention—free from the distraction of her mental health issues and corresponding self-medication—the children, in particular the five youngest (two of whom were infants), were at risk of harm due to a lack of proper care or supervision from their primary caregiver. (See *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, abrogated on other grounds by *In re R.T.* (2017) 3 Cal.5th 622, 629 [when children of "tender years" are involved, "the absence of adequate supervision and care poses an inherent risk to their physical health and safety"].) Substantial evidence therefore supported the juvenile court's finding under count b-2 that mother could not adequately care for her children and that the children were at risk of future harm. We therefore affirm the juvenile court's order finding of jurisdiction based on that count.[9]

---

[9] Given our conclusion that the juvenile court properly exercised jurisdiction over the seven children named in the petition under count b-2, we do not consider whether the other challenged statutory ground for jurisdiction over M.T. alleged in count b-1 is supported by sufficient evidence. (*In re I.J., supra,* 56 Cal.4th at p. 773.) We also note that given the juvenile court's

IV. DISPOSITION

The jurisdictional findings of the juvenile court are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

I concur:

RUBIN, P. J.

---

unchallenged jurisdictional finding against father on count b-3, the court has jurisdiction over his two children, H.T. and M.T., regardless of the outcome of this appeal.

BAKER, J., Concurring in Part and Dissenting in Part

I agree substantial evidence supports the juvenile court's finding of jurisdiction over infant M.T. as alleged in count b-1 of the sustained dependency petition. I disagree that there is substantial evidence supporting dependency jurisdiction over the other five children (not including H.T.)—as alleged in count b-2 and as found by the juvenile court. A single missed drug test (two days after Christmas) is not an adequate basis for dependency jurisdiction on the grounds alleged. (See, e.g., *In re David M.* (2005) 134 Cal.App.4th 822, 830, disapproved on another ground in *In re R.T.* (2017) 3 Cal.5th 622.)

BAKER, J.